UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27

CONAGRA, INC. D/B/A LONGMONT FOODS,[1]

Employer,

and

ROMANA PERALES AND ESTELA QUEZADA,

Petitioners,

and

UNITED FOOD AND COMMERCIAL WORKERS,
LOCAL 7,

Union,

and Case 27-RD-1160

INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 1,

Union,

and

LONGMONT WORKERS COMMITTEE,

Intervenor.

DECISION AND DIRECTION OF ELECTION

On November 12, 2004, Romana Perales and Estela Quezada (Petitioners) filed a petition under Section 9(c) of the National Labor Relations Act (Act) seeking an election to decertify the United Food and Commercial Workers, Local 7 as the

representative of certain production employees of the Employer.[2] On March 15, 2005, a hearing was held before a hearing officer of the National Labor Relations Board, and following the hearing the Employer and UFCW, Local 7 filed briefs.

At hearing, the Petitioners described the unit they seek to decertify as being the production employees represented by UFCW, Local 7.[3] The Petitioners further clarified the "maintenance employees" referred to in the exclusion portion of the unit description as being the maintenance employees represented by IUOE, Local 1.

At hearing, Jesse Barboza, a representative of the Longmont Workers Committee, made a motion to intervene on behalf of that organization and noted its intention to represent the unit of production employees covered by the petition filed in this matter. The Hearing Officer granted the Longmont Workers Committee status as a "participating intervenor", based upon that organization's motion to intervene in this proceeding. See Casehandling Manual Section 11023.4.

This case presents two issues: 1) Whether the petition was properly filed in an appropriate unit and 2) whether the Longmont Workers Committee is a labor organization within the meaning of the Act.

As to these two issues, UFCW, Local 7 contends that the petition is improperly filed, because it seeks an election in a unit different than the recognized bargaining unit.

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[1] As amended at hearing.

[2] Because there is more than one labor organization involved, I shall refer to United Food and Commercial Workers, Local 7 as " UFCW, Local 7"; the International Union of Operating Engineers, Local 1 as "IUOE, Local 1"; and the Longmont Workers Committee by its full name.

[3] The petition filed in this matter listed the appropriate unit as: "All employees performing the following work: Killing, hanging, picking, eviceration, spin chill, rehanging, boning, oven, further processing, packaging, box packaging, palletinzing, boxing, by products, raw manufacturing; excluding all maintenance employees, managers, clerical and supervisory employees."

UFCW, Local 7 also argues that the Longmont Workers Committee is not a bona fide labor organization as defined by the Act.

IUOE, Local 1 takes no position concerning the appropriateness of the petition, other than to note that that labor organization expects that it will not be involved further in this matter, as the petition will either be dismissed as inappropriately filed or an election will be directed in a unit of employees that IUOE, Local 1 does not claim or seek to represent. IUOE, Local 1 also does not take a position relative to the status of the Longmont Workers Committee.

The Employer takes the position that the petition was appropriately filed and argues that, based on a number of factors, there are and always have been, two separate bargaining units. The Employer does not take a position on whether or not the Longmont Workers Committee is a labor organization within the meaning of the Act, but does not object to intervention in this proceeding by that organization.

The Petitioners agree with the Employer's position regarding the appropriateness of the petition and also do not take a position on whether the Longmont Workers Committee is qualified under the Act to represent the petitioned-for production employees. The Petitioners also do not object to the Longmont Workers Committee intervening in this proceeding. The Petitioners indicated that they are unwilling to proceed to an election if one were to be directed in a unit different than the petitioned-for unit.

The Longmont Workers Committee takes no position on the appropriateness of the petitioned-for unit. That organization also necessarily agrees that it is qualified to represent the Employer's production employees.

As discussed below, I find that the petition was appropriately filed and that an election should be conducted in the following bargaining unit:

> **Included:** All production and supply employees employed at the Employer's plant in Longmont, Colorado, including truck drivers, catchers and cleanup employees.
>
> **Excluded:** All maintenance employees, office clerical employees, sales employees, professional employees, guards, and supervisors as defined by the Act.

The employees shall vote on the issue of whether they wish to be represented for purposes of collective bargaining by United Food and Commercial Workers, Local 7; by Longmont Workers Committee; or by neither labor organization

Under Section 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Based upon the entire record in this proceeding I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes and policies of the Act to assert jurisdiction herein.

3. UFCW, Local 7 and the Longmont Workers Committee are labor organizations within the meaning of Section 9(c)(1)(A) of the Act and both claim to represent certain employees of the Employer. IUOE, Local 1 is also a labor organization as defined by the Act, although that labor organization does not seek a place on the ballot in the election being directed in this matter.

4. Based upon the record, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. The Employer is engaged in

the business of food processing at its Longmont, CO plant. During the past 12 months, the Employer has shipped goods valued in excess of $50,000 from its Colorado facilities directly to customers located outside the State of Colorado.

BACKGROUND AND BARGAINING HISTORY

The Employer has had a collective bargaining relationship with UFCW, Local 7 and IUOE, Local 1, as joint representative of its production and maintenance employees since approximately 1979. The most recent such contract was effective by its terms from February 3, 2002 to February 5, 2005.[4]

The instant decertification petition was filed on November 12, 2004, during the 60-90 day window period prior to contract expiration. On November 15, 2004, UFCW, Local 7 filed the first of 11 unfair labor practice charges blocking processing of the petition until early March 2005, when that Union requested to proceed with the processing of the petition, notwithstanding the pendency of several remaining charges.

By letters dated November 29 and December 2, 2004, UFCW, Local 7 indicated its intention to negotiate a new collective bargaining agreement with the Employer that

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[4] This contract showed the "Union" representative of the employees as being United Food and Commercial Workers Union, AFL-CIO, CLC, Local 990 (which the record reflects was a predecessor organization to UFCW, Local 7 prior to May 1, 2004) and IUOE, Local 1. The bargaining unit in that contract was described as: "All production, supply, and maintenance employees, employed at the Employer's plant at Longmont, Colorado, including truck drivers, catchers and cleanup employees; but excluding office clerical employees, sales employees, guards, professional employees and supervisors as defined in the Act."

The record establishes that, notwithstanding the parties' status as joint representative, as a matter of fact, UFCW, Local 7 never represented the approximately 160 maintenance employees and IUOE, Local 1 never represented the petitioned-for production employees. Each labor organization conducted its own contract administration with its respective members using, for example, separate dues check-off forms, separate grievance forms, separate stewards, and separate seniority lists. For reasons set forth below, I find it unnecessary to make a finding concerning whether or not the bargaining unit at the time the petition was filed on November 12, 2004 was represented "jointly" by UFCW, Local 7 and IUOE, Local 1 or, (as argued by the Petitioners and the Employer) the production and supply employees were separately represented

would be separate from IUOE, Local 1.[5] The record also reflects that in approximately January 2005, both UFCW, Local 7 and IUOE, Local 1 began separate contract negotiations with the Employer concerning the employees each labor organization sought to represent in independent collective bargaining agreements.

On February 24, 2005, UFCW, Local 7 signed a contract extension agreement with the Employer that applied only to the employees in the petitioned-for unit. In this same timeframe, IUOE, Local 1 reached an agreement with the Employer and signed a new separate contract that applied only to the maintenance unit.

LABOR ORGANIZATION STATUS

With respect to the issue of whether the Longmont Workers Committee is a labor organization within the meaning of the Act, Jesse Barboza testified as to the following: The Longmont Workers Committee intends to have elected officers and on-the-job stewards, if and when it becomes the certified representative of the employees at issue in this proceeding. In fact, Mr. Barboza hopes to become the full-time elected president of that organization The Longmont Workers Committee also intends to establish by-

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by UFCW, Local 7 and the maintenance employees were separately represented by IUOE, Local 1.

[5] The November 29, 2004 letter from UFCW, Local 7 General Counsel John P. Bowen to IUOE, Local 1 Business Manager and President John Stegeman reads in part, "This is to formally notify you that UFCW Local 7 will be seeking to negotiate a new collective bargaining agreement with ConAgra for the turkey plant in Longmont, Colorado that will not be a joint agreement with the Operating Engineers. This is merely a formal confirmation of the status quo and should result in no effective difference in the represenatation of our respective membership."

The December 2, 2004 letter from UFCW President Ernest L. Duran, Jr. to Employer Human Resources Manager Greg Handy reads in part, "Pursuant to Article 40, Section 2 of the current collective bargaining agreement between ConAgra, and United Food and Commercial Workers Local 7R, AFL-CIO, CLC the Union hereby gives the Company notice of our intent to modify the agreement that expires on or about February 5, 2005. Local 7 wishes to make the changes to the Agreement identified in the attached pages." That same letter later states, "Finally, please note that Local 7 will only be bargaining for its own members and not in conjunction with the

laws and a constitution in the future. That organization further intends to bargain with the Employer over employee wages, benefits, insurance, attendance, hours of work, paid holidays, and job bidding procedures.

ANALYSIS

With regard to the issue of whether the petitioned-for unit is appropriate for further processing, the general rule is that the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit. Campbell Soup Co., 111 NLRB 234 (1955); W.T. Grant Co., 179 NLRB 670 (1969); Mo's West, 283 NLRB 130 (1989). Thus, a compelling argument for dismissal might have been advanced, had UFCW, Local 7 taken the position that dismissal was warranted at the time the petition was filed on November 12, 2004. As noted above, the collective bargaining agreement then in effect provided recognition on its face to the "Union" (which was defined in that contract as comprising both UFCW, Local 7 and IUOE, Local 1), for a unit of all production, supply and maintenance employees, rather than a unit limited to the employees sought by the petition in this matter. In that circumstance, a thorough analysis of exactly how the contract had been administered and whether or not the representation of bargaining unit employees was truly by a joint representative or by separate representatives would likely have been warranted.

However, the passage of time and intervening events have diminished any potential claim that the petitioned-for unit is inappropriate. In this regard, UFCW, Local 7, with full knowledge of the pending petition, took steps that validate the Petitioners' position at the time the petition was filed that the petitioned-for bargaining unit was an

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International Union of Operating Engineers, Local No. 1. The new agreement will be between ConAgra and solely UFCW Local 7. I assume Local 1 will contact you separately."

appropriate unit in which to direct an election. Specifically, UFCW Local 7 advised IUOE, Local 1 in writing that it would be negotiating a new agreement with the Employer; that it would not (emphasis in original letter) be entering into a joint agreement with IUOE, Local 1; and that this was "merely a continuation of the status quo and should result in no effective difference in the representation of our respective membership." A subsequent letter to the Employer noted that UFCW, Local 7 would "be bargaining for its own members and not (emphasis in original letter) in conjunction with the International Union of Operators (sic) Engineers Local No. 1. The new agreement will be between ConAgra and solely UFCW Local 7." Thereafter, UFCW, Local 7, through execution of an extension agreement that on its face applied only to that organization, and IUOE, Local 1, through separate bargaining that resulted in a new collective bargaining agreement covering only the maintenance employees, memorialized the separateness of the two bargaining units.[6]

Accordingly, I find UFCW, Local 7's belated attempt to argue for dismissal of the petition on the technical grounds that the petition was inappropriately filed four months previous (before the parties took unequivocal steps to more formally separate the bargaining units) to be unavailing. Without question, had the Petitioners simply withdrawn Case 27-RD-1160 at or immediately before the hearing (when UFCW, Local 7 raised for the first time the issue that it believed the petition was filed in an inappropriate unit) and filed a new petition utilizing the identical showing of interest used

[6]While UFCW, Local 7 contends on brief that the extension agreement it signed with the Employer on February 24, 2005 binds IUOE, Local 1 to the same agreement, I find this argument to lack merit. First, by its own admission through the letters from two different representatives, UFCW, Local 7 announced that it intended to bargain only for itself. Second, by that date, IUOE, Local 1 either already had a separate contract with the Employer or was about to execute a separate contract with the Employer.

before, the technical argument now presented would be moot. Thus, a decertification petition filed on or immediately before March 15, 2005, would have been filed at a time when IUOE, Local 1 and the Employer had a separate collective bargaining agreement covering maintenance employees only and when UFCW, Local 7 had engaged in formal bargaining with the Employer seeking a contract to cover the production employees only.

As to the issue of whether the Longmont Workers Committee is a labor organization within the meaning of the Act, I find that the record evidence supports such a finding. Section 9(c)(1)(A) of the Act provides that employees may be represented "by any employee or group of employees or any individual or labor organization." An election is directed and a certification is issued unless the proposed bargaining representative fails to qualify as a bona fide representative of the employees. Section 2(5) of the Act defines a labor organization as, "Any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists for the purposes in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and/or conditions of work." Longmont Workers Committee representative Barboza testified that this organization will have employees participating and will bargain with the Employer, if certified, concerning wages, hours, and other working conditions. No record evidence was presented to the contrary. Accordingly, I find that the Longmont Workers Committee is a labor organization under Section 2(5) of the Act. Alto Plastics Manufacturing Corp., 136 NLRB 850 (1966). See also, Litton Business Systems, 199 NLRB 354 (1972) and Machinists, 159 NLRB 137 (1966). While UFCW, Local 7 argues

that the Longmont Workers Committee does no more than “hope to” engage in the activities that would constitute a labor organization, I find the fact that its stated purposes for existence have not yet come to fruition to be immaterial. Michigan Bell Telephone Co., 182 NLRB 632 (1970). See also, Early California Industries, 195 NLRB 671 (1972).

There are approximately 510 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director among the employees in the Unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in any economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote, if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike

which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 7

or

LONGMONT WORKERS COMMITTEE

or

NEITHER

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. ***Excelsior Underwear, Inc.***, 156 NLRB 1236 (1966); ***NLRB v. Wyman-Gordon Company***, 394 U.S. 759 (1969); and ***North Macon Health Care Facility***, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list, containing the ***full*** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the National Labor Relations Board, Region 27 Regional Office, 600 - 17th Street, Suite 700 North, Denver, CO 80202-5433, on or before **April 27, 2005.** No extension of time to file this list shall be

granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **May 4, 2005**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

DATED at Denver, Colorado this 20th day of April 2005.

___/S/ Wayne L. Benson_____

Wayne L. Benson, Acting Regional Director
National Labor Relations Board
700 North Tower, Dominion Plaza
600 Seventeenth Street
Denver, Colorado 80202-5433
Telephone: (303) 844-3551